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Attorneys for Defendant Google LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
JOINT SUBMISSION RE: DEPOSITION
OF GOOGLE OFFICER SUNDAR
PICHAI**

Referral: Hon. Susan van Keulen, USMJ

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the parties’ Joint Submission Re: Deposition of Google Officer Sundar Pichai (“Joint Submission”), which contains a single sentence with non-public, sensitive confidential and proprietary information regarding the financial impact of a certain technical feature to Google. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Joint Submission:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
December 17, 2021 Joint Submission	Portions highlighted in yellow at: 2:19	Google

II. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue constitutes “competitively sensitive information,” such as “confidential research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information”).

III. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE” STANDARD AND SHOULD ALL BE SEALED

Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good

1 cause to seal is shown when a party seeks to seal materials that “contain[] confidential information
2 about the operation of [the party’s] products and that public disclosure could harm [the party] by
3 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014
4 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive
5 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*
6 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information
7 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be
8 used to the company’s competitive disadvantage”) (citation omitted).

9 Here, the Joint Submission comprises confidential information regarding financial impact of a
10 certain technical feature to Google that Google does not share publicly. Specifically, this information
11 provides details related to advertising-related costs associated with implementing a certain technical
12 change to its Incognito Mode. Such information reveals Google’s internal strategies, system designs,
13 and business practices for operating and maintaining one of its important services while complying
14 with legal and privacy obligations.

15 Public disclosure of the above-listed information would harm Google’s competitive standing it
16 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
17 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is
18 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
19 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
20 sensitive business information related to Google’s processes and policies to ensure the integrity and
21 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
22 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
23 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
24 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
25 motion to seal as to “internal research results that disclose statistical coding that is not publically
26 available”).

27 Moreover, if publicly disclosed, malicious actors may use such information to seek to
28 compromise Google’s internal systems and data structures. Google would be placed at an increased

1 risk of cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re*
2 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
3 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
4 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
5 threat is an additional reason for this Court to seal the identified information.

6 The information Google seeks to redact is the minimal amount of information needed to
7 protect its confidential information from being exposed to its competitors and the public at large. The
8 “good cause” rather than the “compelling reasons” standard should apply but under either standard,
9 Google’s sealing request is warranted.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Google respectfully requests that the Court seal the identified
12 portions of the Joint Submission .
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1 DATED: December 17, 2021

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